IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, ET AL.

PETITION OF APPELLEE ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY FOR A REHEARING.

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To the Honorable Supreme Court of the United States:

Comes now the above named appellee, Arlington and Fairfax Motor Transportation Company, and presents this petition for a rehearing in the above entitled cause, and, in support thereof, respectfully shows:

There are several points upon which appellee feels that the decision of the Court should be reexamined, but it has

limited itself in this petition to only two, each of which is national in scope and so far reaching in effect as to seem to require reconsideration and a rehearing of the case. These points are (1) The question of the initiation of commutation fares, and (2) The question of through routes and joint rates.

I

The Court Should Rehear and Re-examine the Question of Commutation Fares

The power of the Commission to initiate commutation or special fares (where none had theretofore ever existed) against the will and over the protest of the carrier affected is a matter of great importance which, it is respectfully submitted, has not been adequately dealt with by the Court in the majority opinion. The matter is one which concerns not only the carriers in this proceeding, but *all* carriers, large and small, by rail, by water and by motor. The lack of power to *compel* the issuance of special or commutation fares where none had been voluntarily established by the carrier was vigorously asserted by Commissioner Patterson in his dissenting opinion concurred in by Commissioner Miller (R. 855) where he concluded his discussion of the subject by saying:

> *"We have never claimed or exercised such power. I do not think that we have it."*

His opinion is strongly buttressed by an unbroken line of cases in the Commission, and in this court.[1]

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[1] *Note: Interstate Railway Company* v. *Massachusetts*, 207 U. S. 79, referred to by appellants (brief U. S. p. 41) as holding that a state law which fixed special rates for school children had been upheld by this Court, failed to state to the court that the ground of this Court's decision was that a law in respect of said rates was in force on the statute books of Massachusetts at the time the Interstate Railway Company was incorporated, and its charter was therefore taken subject to the conditions that

The point was urged by appellees here and in the court below. (See appellees' brief, pp. 56-66 inclusive.)

Such an important question of power—so strongly denied by members of the Commission itself—would seem to require a full consideration and discussion by the court in its opinion. At present this important question of law seems to be disposed of by the blanket statement at the end of the opinion that

> "Other contentions urged by the carriers have been considered, but need not be discussed since we are satisfied with the disposition made of them by the Interstate Commerce Commission."

The Court's opinion thus summarily determines the existence of a power in the Commission never before held to exist, without any discussion whatsoever—in fact, without even mentioning the point.

This appellee urges that reconsideration be given to this point by the Court, and believes that if this is done the Court will determine that the power *to require* commutation fares does not in fact exist.

II

The Court Should Rehear and Re-examine the Question of Through Routes and Joint Rates

It is respectfully submitted that the Court's opinion is not clear on the subject of through routes and joint rates and that this question should be re-examined. The opinion says (slip opinion p. 4):

> "The Commission found, however, that the Transit Company had voluntarily established through routes,

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special rates for school children might be required. Moreover, as pointed out by Mr. Justice Holmes, in stating his *personal opinion* (after stating the basis of the court's opinion above) the action could have been upheld under the police power of the state, a power which is non-existent here. The Interstate case is argument for, rather than against, appellees' position.

and contends its finding has support in the evidence and consequently sustains its order."

Assuming that there could have been a finding by the Commission of a through route established by the Capital Transit Company *with itself*, there was certainly no evidence upon which a finding that the Capital Transit Company had established a through route with any of the other carriers could be based. Nor had any of the other carriers established through routes with each other. So far as the existence of a through route on the part of this appellee is concerned, there simply was and is no evidence to that effect, and it is not the fact. We challenge appellants to point to any such evidence.

Does the court's opinion mean that although no through route exists between the Arlington and Fairfax Motor Transportation Company and the Capital Transit Company, nevertheless, the Commission may compel the establishment of such through route merely because the Court is satisfied that the Capital Transit Company established a through route with itself *on its own line?* If so, it is respectfully submitted that such a ruling is so radical a one that reconsideration should be given to the question. Is it not possible that the distinction between the power *"to require through routes"* (which power the Commission does *not* possess—except between like carriers) and the power *"to require joint fares"* when through routes between carriers have already been voluntarily established (which power the Commission does possess), may have been lost sight of in the majority opinion? The Capital Transit Company is not a "like common carrier of passengers by motor vehicle" with the Arlington and Fairfax within the meaning of Section 216(a) of the Interstate Commerce Act, and the Court's opinion does not unequivocally find that it is. Much is left to conjecture.

Since almost every street car line in the United States is today supplemented by bus operations, may not the Court's opinion mean that every such local street car operation may be forced into the establishment of through routes and joint fares with every interstate common carrier of passengers by motor behicle which enters its territory? If so, then the embargo which Congress laid on the power of the Commission to require through routes would, as a practical matter, be nullified.

Appellees should be given an opportunity to reargue these important questions.

Conclusion

From the foregoing reasons it is respectfully urged that this petition for rehearing be granted, and that the decree of the United States District Court for the District of Columbia be, upon further consideration, affirmed.

Respectfully submitted,

HUGH H. OBEAR,
F. K. LANE,
Counsel for Arlington and Fairfax Motor Transportation Company, Appellee.

Certificate of Counsel

We, counsel for the Arlington and Fairfax Motor Transportation Company, one of the appellees above named, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

HUGH H. OBEAR,
F. K. LANE,
Counsel for Arlington and Fairfax Motor Transportation Company, Appellee.